

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6129 OF 2016

Shaishikant S/o Manohar Joshi .. Applicant

Vs.

The State of Maharashtra .. Respondent

Mr. Hemant Surve, Advocate for the applicant

Mr. S.D. Ghayal, APP for the respondent/State

CORAM : A.S. CHANDURKAR, J.

DATE : 16/11/2016

ORAL ORDER :

Heard.

2. The applicant apprehends arrest in connection with crime no.I-153 of 2016 registered at Khultabad Police Station, Dist. Aurangabad for the offences punishable under section 420 and 409 of the Indian Penal Code.

3. As per the FIR dated 4/10/2016, the applicant, during his course of service with the Postal department is alleged to have committed temporary embezzlement of certain amounts with which he was assigned for being deposited. Amount of Rs.35,000/- was alleged to have been handed

over on 28/6/2014 while further amount of Rs.10,000/- was handed over on 10/2/2015 for being deposited in the schemes run by the Postal department. The report has been lodged by the Postal authorities after noticing the records in that regard.

4. Learned counsel for the applicant has submitted that the amounts in question have been duly accounted for and have been paid to Smt. Sangita Gosavi, who has sworn an affidavit to that effect on 6/10/2016. It is submission of learned counsel for the applicant that the case of the prosecution is based purely on documentary material and as the entire records are with the Postal department, there is no need of his custodial interrogation. For the said purpose, learned counsel for the applicant has placed reliance upon the following decisions :-

- (a) Manjusha Shete Vs. State of Maharashtra 2009 LawSuit
(Bom) 2639**
- (b) State of Maharashtra Vs. Ketan Parekh & etc. 2008(4)
LJSOFT 160**

**(c) Jaywant Prabhakar Bhande Vs. State of Maharashtra
2015 (7) LJSOFT 167**

It is further submitted that the applicant is willing to co-operate with the investigation.

5. The application is opposed by learned Additional Public Prosecutor by relying upon the Police papers. It is submitted that various instances of temporary misappropriation have been noticed by the postal authorities. Statement of the depositor - Sangita Gosavi has been recorded, in which she has stated that though the amount of Rs.40,000/- deposited by her were subsequently received back by her, the affidavit to that effect was sworn in favour of the applicant at his behest.

6. Perused the police papers. The same indicates the investigation being at an initial stage. The fact that amount of Rs.40,000/- was handed over to the applicant for being deposited with the postal authorities appears from the documents on record. Considering the post held by the applicant and the fact that it was his responsibility to deposit the amount entrusted

by the depositors, I am not inclined to entertain the application favourably at this stage. Mere return of the amount by the applicant after the postal authorities noticed the temporary embezzlement is of no consequence at this stage.

7. The decisions relied upon by the learned counsel for the applicant cited supra are on the aspect that if the documentary records are already seized, there could be no need of custodial interrogation. Another aspect highlighted is possibility of fleeing from justice.

. In the facts of the present case, it could be seen that the applicant has proceeded to obtain affidavit of the depositor, who has herself stated that the same was given so as to protect the service of the applicant. Said decisions therefore do not assist the case of the applicant.

8. In my view, no case for grant of relief at this stage is made out. Hence, the Application stands rejected.

[A.S. CHANDURKAR]
JUDGE

arp/